



Rep. Camille Y. Lilly

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LRB101 04717 RJF 56577 a

1 AMENDMENT TO HOUSE BILL 173

2 AMENDMENT NO. _____. Amend House Bill 173 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The State Prompt Payment Act is amended by
5 changing Section 7 as follows:

6 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

7 Sec. 7. Payments to subcontractors and material suppliers.

8 (a) When a State official or agency responsible for
9 administering a contract submits a voucher to the Comptroller
10 for payment to a contractor, that State official or agency
11 shall promptly make available electronically the voucher
12 number, the date of the voucher, ~~and~~ the amount of the voucher,
13 and the names of all subcontractors who are to be paid from
14 that pay period in the voucher. The State official or agency
15 responsible for administering the contract shall provide
16 subcontractors and material suppliers, known to the State

1 official or agency, with instructions on how to access the
2 electronic information.

3 (a-5) When a contractor receives any payment, the
4 contractor shall pay each subcontractor and material supplier
5 electronically within 72 hours after receiving payment in
6 proportion to the work completed by each subcontractor and
7 material supplier its application or pay estimate, plus
8 interest received under this Act. When a contractor receives
9 any payment, the contractor shall pay each lower-tiered
10 subcontractor and material supplier and each subcontractor and
11 material supplier shall make payment to its own respective
12 subcontractors and material suppliers. If the contractor
13 receives less than the full payment due under the public
14 construction contract, the contractor shall be obligated to
15 disburse on a pro rata basis those funds received, plus
16 interest received under this Act, with the contractor,
17 subcontractors and material suppliers each receiving a
18 prorated portion based on the amount of payment each has
19 earned. When, however, the State official or agency does not
20 release the full payment due under the contract because there
21 are specific areas of work or materials the State agency or
22 official has determined are not suitable for payment, then
23 those specific subcontractors or material suppliers involved
24 shall not be paid for that portion of work rejected or deemed
25 not suitable for payment and all other subcontractors and
26 suppliers shall be paid based upon the amount of payment each

1 has earned, plus interest received under this Act.

2 (a-10) For construction contracts with the Department of
3 Transportation, the contractor, subcontractor, or material
4 supplier, regardless of tier, shall not offset, decrease, or
5 diminish payment or payments that are due to its subcontractors
6 or material suppliers without reasonable cause.

7 A contractor, who refuses to make prompt payment
8 electronically within 72 hours after receiving payment, in
9 whole or in part, shall provide to the subcontractor or
10 material supplier and the public owner or its agent, a written
11 notice of that refusal. The written notice shall be made by a
12 contractor no later than 5 calendar days after payment is
13 received by the contractor. The written notice shall identify
14 the Department of Transportation's contract, any subcontract
15 or material purchase agreement, a detailed reason for refusal,
16 the value of the payment to be withheld, and the specific
17 remedial actions required of the subcontractor or material
18 supplier so that payment may be made. Written notice of refusal
19 may be given in a form and method which is acceptable to the
20 parties and public owner.

21 (b) If the contractor, without reasonable cause, fails to
22 make full payment of amounts due under subsection (a) to its
23 subcontractors and material suppliers within 72 hours ~~15~~
24 ~~calendar days~~ after receipt of payment from the State official
25 or agency, the contractor shall pay to its subcontractors and
26 material suppliers, in addition to the payment due them,

1 interest in the amount of 2% per month, calculated from the
2 expiration of the 72-hour ~~15-day~~ period until fully paid. This
3 subsection shall further apply to any payments made by
4 subcontractors and material suppliers to their subcontractors
5 and material suppliers and to all payments made to lower tier
6 subcontractors and material suppliers throughout the
7 contracting chain.

8 (1) If a contractor, without reasonable cause, fails to
9 make payment in full as provided in subsection (a-5) within
10 72 hours ~~15-calendar days~~ after receipt of payment under
11 the public construction contract, any subcontractor or
12 material supplier to whom payments are owed may file a
13 written notice and request for administrative hearing with
14 the State official or agency setting forth the amount owed
15 by the contractor and the contractor's failure to timely
16 pay the amount owed. The written notice and request for
17 administrative hearing shall identify the public
18 construction contract, the contractor, and the amount
19 owed, and shall contain a sworn statement or attestation to
20 verify the accuracy of the notice. The notice and request
21 for administrative hearing shall be filed with the State
22 official for the public construction contract, with a copy
23 of the notice concurrently provided to the contractor.
24 Notice to the State official may be made by certified or
25 registered mail, messenger service, or personal service,
26 and must include proof of delivery to the State official.

1 (2) The State official or agency, within 15 calendar
2 days after receipt of a subcontractor's or material
3 supplier's written notice and request for administrative
4 hearing, shall hold a hearing convened by an administrative
5 law judge to determine whether the contractor withheld
6 payment, without reasonable cause, from the subcontractors
7 or material suppliers and what amount, if any, is due to
8 the subcontractors or material suppliers, and the
9 reasonable cause or causes asserted by the contractor. The
10 State official or agency shall provide appropriate notice
11 to the parties of the date, time, and location of the
12 hearing. Each contractor, subcontractor, or material
13 supplier has the right to be represented by counsel at a
14 hearing and to cross-examine witnesses and challenge
15 documents. Upon the request of the subcontractor or
16 material supplier and a showing of good cause, reasonable
17 continuances may be granted by the administrative law
18 judge.

19 (3) Upon a finding by the administrative law judge that
20 the contractor failed to make payment in full, without
21 reasonable cause, as provided in subsection (a-10), then
22 the administrative law judge shall, in writing, order the
23 contractor to pay the amount owed to the subcontractors or
24 material suppliers plus interest within 15 calendar days
25 after the order.

26 (4) If a contractor fails to make full payment as

1 ordered under paragraph (3) of this subsection (b) within
2 15 days after the administrative law judge's order, then
3 the contractor shall be barred from entering into a State
4 public construction contract for a period of one year
5 beginning on the date of the administrative law judge's
6 order.

7 (5) If, on 2 or more occasions within a 3-calendar-year
8 period, there is a finding by an administrative law judge
9 that the contractor failed to make payment in full, without
10 reasonable cause, and a written order was issued to a
11 contractor under paragraph (3) of this subsection (b), then
12 the contractor shall be barred from entering into a State
13 public construction contract for a period of 6 months
14 beginning on the date of the administrative law judge's
15 second written order, even if the payments required under
16 the orders were made in full.

17 (6) If a contractor fails to make full payment as
18 ordered under paragraph (4) of this subsection (b), the
19 subcontractor or material supplier may, within 30 days of
20 the date of that order, petition the State agency for an
21 order for reasonable attorney's fees and costs incurred in
22 the prosecution of the action under this subsection (b).
23 Upon that petition and taking of additional evidence, as
24 may be required, the administrative law judge may issue a
25 supplemental order directing the contractor to pay those
26 reasonable attorney's fees and costs.

1 (7) The written order of the administrative law judge
2 shall be final and appealable under the Administrative
3 Review Law.

4 (c) This Section shall not be construed to in any manner
5 diminish, negate, or interfere with the
6 contractor-subcontractor or contractor-material supplier
7 relationship or commercially useful function.

8 (d) This Section shall not preclude, bar, or stay the
9 rights, remedies, and defenses available to the parties by way
10 of the operation of their contract, purchase agreement, the
11 Mechanics Lien Act, or the Public Construction Bond Act.

12 (e) State officials and agencies may adopt rules as may be
13 deemed necessary in order to establish the formal procedures
14 required under this Section.

15 (f) As used in this Section:

16 "Payment" means the discharge of an obligation in money or
17 other valuable consideration or thing delivered in full or
18 partial satisfaction of an obligation to pay. "Payment" shall
19 include interest paid pursuant to this Act.

20 "Reasonable cause" may include, but is not limited to,
21 unsatisfactory workmanship or materials; failure to provide
22 documentation required by the contract, subcontract, or
23 material purchase agreement; claims made against the
24 Department of Transportation or the subcontractor pursuant to
25 subsection (c) of Section 23 of the Mechanics Lien Act or the
26 Public Construction Bond Act; judgments, levies, garnishments,

1 or other court-ordered assessments or offsets in favor of the
2 Department of Transportation or other State agency entered
3 against a subcontractor or material supplier. "Reasonable
4 cause" does not include payments issued to the contractor that
5 create a negative or reduced valuation pay application or pay
6 estimate due to a reduction of contract quantities or work not
7 performed or provided by the subcontractor or material
8 supplier; the interception or withholding of funds for reasons
9 not related to the subcontractor's or material supplier's work
10 on the contract; anticipated claims or assessments of third
11 parties not a party related to the contract or subcontract;
12 asserted claims or assessments of third parties that are not
13 authorized by court order, administrative tribunal, or
14 statute. "Reasonable cause" further does not include the
15 withholding, offset, or reduction of payment, in whole or in
16 part, due to the assessment of liquidated damages or penalties
17 assessed by the Department of Transportation against the
18 contractor, unless the subcontractor's performance or supplied
19 materials were the sole and proximate cause of the liquidated
20 damage or penalty.

21 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;
22 100-863, eff. 8-14-18.)".